IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 469 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES ; 3 to 5 NO**

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STATE OF GUJARAT - Applicant(s)
Versus
KISHORBHAI BABUBHAI JANI & 3 - Respondent(s)

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Appearance :
MR SS PATEL ADDL PUBLIC PROSECUTOR for Applicant(s) : 1,
MR DK MODI for Respondent(s) : 1 - 3.
MR MD MODI for Respondent(s) : 1 - 3.
RULE SERVED for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/12/2006

ORAL JUDGMENT

1. The State has approached this court under section 397 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") to challenge the

order dated 3.6.1998 below Application Exh.21 passed by the learned Chief Judicial Magistrate, Bhavnagar in Criminal Case No.3325 of 1990 whereby the proceedings for the alleged offences under the Prevention of Food Adulteration Act, 1954 were ordered to be dropped. Admittedly, samples of honey were taken by the Food Inspector on 13.7.1989 from respondents No.1 and 2, which honey was alleged to have been supplied and manufactured by respondents No.3 and 4. The samples were sent to the Public Analyst on 15.7.1989 and the analysis report dated 5.8.1989 showed that the sample was adulterated. The second part of the sample was sent to the Central Food Laboratory which also found the sample to be adulterated but the percentage of excess sucrose was different in both the reports.

2. Even after noting that the certificate of the Central Food Laboratory superseded the report of the Public Analyst and even after adverting to the Full Bench decision of this Court in ***Prahladbhai Ambalal Patel v. State of Gujarat [1984 (2) GLR 1380],*** the learned Judge decided to drop the proceeding on the untenable ground that the Central Food Laboratory had analysed the sample after two years. The impugned judgment vaguely referred to the order of the Supreme Court in ***Nortan Mal v. State of Rajasthan [1995***

Cri.L.J. 2661] and dropped the proceeding in view of the overall situation.

3. It is clearly held by the Full Bench of this court in ***Prahladbhai Ambalal Patel*** (supra) that, when sub-section (3) of section 13 says that the certificate issued by the Director of Central Food Laboratory shall supersede the report given by the Public Analyst under sub-section (1), it clearly means that it replaces the Public Analyst's report, meaning thereby that once the Director's certificate is received, the earlier report given by the Public Analyst is rendered obsolete and stands wiped out. The proviso to sub-section (5) which was inserted with effect from 1.4.1976 made the certificate issued by the Director final and conclusive with regard to the facts stated therein. Therefore, it was not permissible for the court to rely on the report of the Public Analyst once it was superseded by the certificate issued by the Director of Central Food Laboratory. Thus, there was no scope for considering the report of the Public Analyst or the variance between the two reports. Similarly, the order of the Supreme Court in ***Nortan Mal*** (supra) clearly stated that minimal variable alone could not be a defence and that that order was made in the peculiar facts and circumstances of the case where adulteration

was found to be marginal, there was possibility of an error of judgment in analysis and the matter was very old.

4. Thus, in short, the impugned order was wholly unsustainable in law and it expressly defied the law laid down by this Court in the aforesaid Division Bench decision. Therefore, the petition is allowed, the impugned order dated 3.6.1998 is set aside and Rule is made absolute with special costs of Rs.10,000/- (rupees ten thousand) which shall be equally shared by the respondents and paid to the petitioner. The trial court shall proceed with the trial of the case from the stage the proceedings were dropped and shall conclude it as expeditiously as practicable. A copy of this judgment shall be kept in the personal file of the learned Judge who has passed the impugned order.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)